

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re RIPPLE LABS, INC. LITIGATION

Case No. 4:18-cv-06753-PJH

CLASS ACTION

This Document Relates to:
All Actions

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

1 In conjunction with their motion to dismiss, Defendants ask the Court to take judicial
 2 notice of four documents: (1) a Notice of Final Rule from the Bureau of Consumer Financial
 3 Protection published in the Federal Register; (2) a submission by Ripple Labs Inc. to the
 4 Conference of State Bank Supervisors; (3) an article from CNBC.com; and (4) a tweet and linked
 5 article from Ripple. *See* ECF No. 103. For the reasons below, that request is **GRANTED IN**
 6 **PART AND DENIED IN PART**. The Court takes notice of the second, third, and fourth
 7 documents (ECF Nos. 103-3, 103-4, and 103-5), but does not take notice of the truth of any
 8 factual assertions contained therein. The Court does not take notice of any factual assertions
 9 contained in the first document (ECF No. 103-2).

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11 Plaintiff does not oppose the Court taking judicial notice of the second, third, and fourth
 12 documents, so the Court takes judicial notice of those documents' existence and contents.
 13 However, "[j]ust because [a] document itself is susceptible to judicial notice does not mean that
 14 every assertion of fact within that document is judicially noticeable for its truth." *Khoja v.*
 15 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Defendants do not identify
 16 which factual assertions they seek to have noticed, nor do they show that any factual assertions in
 17 the documents are not subject to reasonable dispute. *Contra* Fed. R. Evid. 201. And the factual
 18 assertions on which Defendants rely in their motion to dismiss are clearly disputed. "Courts
 19 cannot take judicial notice of the contents of documents for the truth of the matters asserted
 20 therein when the facts are disputed." *Cal. Sportfishing Protection Alliance v. Shiloh Grp., LLC*,
 21 268 F. Supp. 3d 1029, 1038 (N.D. Cal. July 24, 2017). Consequently, the Court does not take
 22 notice of the truth of any factual assertions in these documents.

23 Plaintiff does oppose the Court taking judicial notice of the first document. By statute, the
 24 Court may take notice of the Notice of Final Rule itself. *See* 44 U.S.C. § 1507. But "[j]ust
 25 because the document itself is susceptible to judicial notice does not mean that every assertion of
 26 fact within that document is judicially noticeable for its truth." *Khoja*, 988 F.3d at 999.
 27 Defendants still must identify the facts they seek to be noticed and show that the facts are not
 28 subject to reasonable dispute. *See* Fed. R. Evid. 201. Here, however, Defendants fail to show

1 that *any* factual assertions contained within the Notice of Final Rule are not subject to reasonable
 2 dispute. Nor do Defendants even identify which factual assertions within the Notice of Final
 3 Rule they seek to have noticed.

4 Courts routinely reject similarly faulty requests. For example, in *Advanced Risk*
 5 *Managers, LLC v. Equinox Management Group, Inc.*, 2019 WL 6716292 (N.D. Cal. Dec. 10,
 6 2019), the defendant requested judicial notice of publicly filed documents but failed to identify
 7 the facts it sought to be noticed and failed to explain how such facts were not subject to
 8 reasonable dispute. *Id.* at *3. The court took notice of the existence of the documents and of the
 9 existence of the underlying lawsuit, but it expressly refused to take notice of “any assertions of
 10 fact” within the document. *Id.* In *DalPoggetto v. Wirecard AG*, 2020 WL 2374948 (C.D. Cal.
 11 Apr. 15, 2020), the defendants “simply request[ed] that the court take judicial notice of the
 12 documents in their entirety.” *Id.* at *2. Because they failed to “identify which facts” they sought
 13 to be noticed and did not “explain why the court can judicially notice those facts,” the court
 14 declined to take judicial notice of the documents at all. *Id.*

15 From Defendants’ motion to dismiss, it appears they want the Court to take notice of the
 16 truth of two statements within the Notice of Final Rule that Defendants claim show XRP’s utility.
 17 See ECF No. 102 at 2, 5–6. To the extent Defendants ask the Court to take notice of those
 18 statements, that request is denied because Defendants’ claim is factually disputed. Plaintiff
 19 alleges the opposite: that XRP has little or no utility. See ECF No. 87 at ¶ 43. And Defendants
 20 make no attempt to show there can be no reasonable dispute.

21 For the foregoing reasons, Defendants’ request to take judicial notice of any factual
 22 assertion within the Notice of Final Rule (ECF No. 103–2) is denied.

23 Dated: _____

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 25 HON. PHYLLIS J. HAMILTON
 26 UNITED STATES CHIEF DISTRICT JUDGE
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